

**From:** Paul Nicoletti <paulnicoletti@gmail.com>  
**Sent:** Friday, June 20, 2014 9:33 AM  
**To:** jthermanos; John Hermann  
**Subject:** Re: Malibu Media v. Jason Pontello | NEMI69-1

**FRE 408(a) PROTECTED SETTLEMENT DISCUSSIONS**

John,

I do not recall hearing back from you on the offer below. Please let me know if I should prepare a settlement agreement. If we cannot settle, then please provide me with a date in which Patrick Paige (Plaintiff's expert) can expect to receive the Defendant's hard drives. Based on Defendant's discovery responses, he has a MacBook Pro, and a Dell Inspiron 1720. I would like to have Patrick Paige image those as soon as possible. Although Defendant did not list how many tablets or iPads he owns, Plaintiff would like to image all tablets (and iPads) as well. Plaintiff is willing to pay for shipping. When can Defendant drop them off to UPS for shipping? Patrick's address is as follows:

Patrick Paige  
1880 North Congress Ave. Ste 333  
Boynton Beach FL 33426

Best Regards,

NICOLETTI LAW, PLC  
Paul Nicoletti (P-44419)  
33717 Woodward Avenue, Ste. #433  
Birmingham, MI 48009  
Landline: (248) 203-7800  
eFax: (248) 928-7051  
Email: [paulnicoletti@gmail.com](mailto:paulnicoletti@gmail.com)  
<http://www.nicolettilawplc.com>

This e-mail message contains confidential privileged information intended solely for the addressee. Please do not read, copy, or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (248) 203-7800 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Thank you. This e-mail and all other electronic (including voice) communications from the sender's firm are for informational purposes only. No such communication is intended by the sender to constitute either an electronic record or an electronic signature, or to constitute any agreement by the sender to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed unless otherwise specifically indicated.



On Thu, Jun 12, 2014 at 6:55 PM, Paul Nicoletti <[paulnicoletti@gmail.com](mailto:paulnicoletti@gmail.com)> wrote:

**FRE 408(a) PROTECTED SETTLEMENT DISCUSSIONS**

John:

I have relayed your offer to my client and they respectfully reject. They have informed me they will not accept any offer lower than                      Please advise if I should prepare an agreement.

Best Regards,

NICOLETTI LAW, PLC  
Paul Nicoletti (P-44419)  
33717 Woodward Avenue, Ste. #433  
Birmingham, MI 48009  
Landline: (248) 203-7800  
eFax: (248) 928-7051  
Email: [paulnicoletti@gmail.com](mailto:paulnicoletti@gmail.com)  
<http://www.nicolettilawplc.com>

This e-mail message contains confidential privileged information intended solely for the addressee. Please do not read, copy, or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (248) 203-7800 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Thank you. This e-mail and all other electronic (including voice) communications from the sender's firm are for informational purposes only. No such communication is intended by the sender to constitute either an electronic record or an electronic signature, or to constitute any agreement by the sender to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed unless otherwise specifically indicated.



---

**From:** Paul Nicoletti <paulnicoletti@gmail.com>  
**Sent:** Friday, June 06, 2014 2:11 PM  
**To:** John Hermann; jthermanos  
**Subject:** DEVICE IMAGING NEXT WEEK BY WILLIAM JONES / NEMI61-1 SCOTT MILLER;  
NEMI69-1 JASON PONTELLO; NEMI105-1 DOUG MOYER; NEMI46-1 MATT BEMIS;  
NWTMI12-1 ROBERT MAHON

John, as we discussed day before yesterday, we want to have William Jones perform device imaging after June 11, 2014 and prior to June 25, 2014. The subject line above contains the matters we wish to image the devices with regard to. Please advise as soon as possible.

Best Regards,

NICOLETTI LAW, PLC  
Paul Nicoletti (P-44419)  
33717 Woodward Avenue, Ste. #433  
Birmingham, MI 48009  
Landline: (248) 203-7800  
eFax: (248) 928-7051  
Email: [paulnicoletti@gmail.com](mailto:paulnicoletti@gmail.com)  
<http://www.nicolettilawplc.com>

This e-mail message contains confidential privileged information intended solely for the addressee. Please do not read, copy, or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (248) 203-7800 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Thank you. This e-mail and all other electronic (including voice) communications from the sender's firm are for informational purposes only. No such communication is intended by the sender to constitute either an electronic record or an electronic signature, or to constitute any agreement by the sender to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed unless otherwise specifically indicated.



---

**From:** Paul Nicoletti <paulnicoletti@gmail.com>  
**Sent:** Thursday, May 22, 2014 12:37 PM  
**To:** John Hermann  
**Subject:** Re: NEMI69-1; Malibu Media v. Jason Pontello; Case No.: 2:13-cv-12197 | PLAINTIFF'S MOTION TO COMPEL AND FORENSIC IMAGING OF DRIVES

John, thanks for agreeing to use William Jones. The motion for next Thursday is your motion and I am fine with adjourning it. Just let me know.

Best Regards,

NICOLETTI LAW, PLC  
Paul Nicoletti (P-44419)  
33717 Woodward Avenue, Ste. #433  
Birmingham, MI 48009  
Landline: (248) 203-7800  
eFax: (248) 928-7051  
Email: [paulnicoletti@gmail.com](mailto:paulnicoletti@gmail.com)  
<http://www.nicolettilawplc.com>

This e-mail message contains confidential privileged information intended solely for the addressee. Please do not read, copy, or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (248) 203-7800 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Thank you. This e-mail and all other electronic (including voice) communications from the sender's firm are for informational purposes only. No such communication is intended by the sender to constitute either an electronic record or an electronic signature, or to constitute any agreement by the sender to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed unless otherwise specifically indicated.



On Thu, May 22, 2014 at 12:14 PM, John Hermann <[hermannlawoffices@comcast.net](mailto:hermannlawoffices@comcast.net)> wrote:

Paul:

I have no objection to having William Jones perform the mirror imaging. I will try and provide you with dates to do the mirror imaging as soon as possible. Also, where do you stand on adjourning the motion hearing next Thursday?

LAW OFFICE OF  
**JOHN T. HERMANN**

JOHN T. HERMANN

ATTORNEY AT LAW

2684 WEST ELEVEN MILE ROAD

BERKLEY, MI 48072

248-591-9291

248-591-2304 FAX

HERMANNLAWOFFICES@COMCAST.NET

\*\*\*\*\*

*Notice: This e-mail message and any attachments are for the confidential use of the intended recipient.*

*If that isn't you, please do not read the message or attachments, or distribute or act in reliance on them.*

*If you have received this message by mistake, please immediately notify us and delete this message and*

*any attachments. Thank you.*

**From:** Paul Nicoletti [mailto:[paulnicoletti@gmail.com](mailto:paulnicoletti@gmail.com)]

**Sent:** Thursday, May 22, 2014 10:56 AM

**To:** John Hermann; jthermanos

**Subject:** NEMI69-1; Malibu Media v. Jason Pontello; Case No.: 2:13-cv-12197 | PLAINTIFF'S MOTION TO COMPEL AND FORENSIC IMAGING OF DRIVES

John,

Previously, when I suggested QDiscovery, I was under the impression that they could image drives in Michigan (as they have previously in Indiana). However, after consulting with them, this will not be possible. I went ahead and contacted a local computer professional to create the images. The protective order in place allows us to modify the order in writing. Therefore, I am requesting that we use William Jones to image your client's hard drives only. Attached please find his CV. In addition, he can travel to the defendant's home to conduct the imaging. To be clear, Patrick Paige will still conduct the hard drive examination. William Jones will only be imaging the drives and shipping them to Patrick. This saves Defendant the aggravation of parting with their computers for an extended period of time while Patrick Paige creates the images. Please advise if this acceptable. If you do not object to having William Jones create the images of Defendant's hard drives, please provide me with suitable dates to schedule the imaging.

Best Regards,

NICOLETTI LAW, PLC  
Paul Nicoletti (P-44419)  
33717 Woodward Avenue, Ste. #433  
Birmingham, MI 48009  
Landline: (248) 203-7800  
eFax: (248) 928-7051  
Email: [paulnicoletti@gmail.com](mailto:paulnicoletti@gmail.com)  
<http://www.nicolettilawplc.com>

This e-mail message contains confidential privileged information intended solely for the addressee. Please do not read, copy, or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (248) 203-7800 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Thank you. This e-mail and all other electronic (including voice) communications from the sender's firm are for informational purposes only. No such communication is intended by the sender to constitute either an electronic record or an electronic signature, or to constitute any agreement by the sender to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed unless otherwise specifically indicated.



---

From: **John Hermann** <[hermannlawoffices@comcast.net](mailto:hermannlawoffices@comcast.net)>  
Date: Thu, May 15, 2014 at 1:44 PM  
Subject: RE: NEMI69-1; Malibu Media v. Jason Pontello; Case No.: 2:13-cv-12197 | PLAINTIFF'S MOTION TO COMPEL AND FORENSIC IMAGING OF DRIVES  
To: Paul Nicoletti <[paulnicoletti@gmail.com](mailto:paulnicoletti@gmail.com)>

Paul:

I responded to your March 6, 2014 letter on April 10, 2014, and have attached a copy of same. I have no objection to having Mr. Paige's inspection however the order provides that we will make the devices available for cloning or mirror imaging so that they can be inspected by Mr. Paige. Previously you indicated that you were going to utilize QDiscovery to conduct the mirror image cloning of the devices. Again, I have no objection but will need to schedule an available date and/or time for either Mr. Paige or QDiscovery to perform the imaging. Finally I have no objection to your efforts to deposing Mr. Pontello; however, I believe that it would be advisable to conduct the forensic examination first. In the meantime, please provide me with available dates during the month of June and I will provide you with a date that works for Mr. Pontello and myself. As for the other remaining issues, I cannot stipulate to your efforts to conduct the third-party discovery in the manner you have suggested but will participate in any duly noticed third-party discovery

initiated by your office. I hope that my response narrows the issues articulated in your correspondence. Should you have any additional question, please feel free to contact me.

LAW OFFICE OF  
**JOHN T. HERMANN**

JOHN T. HERMANN

ATTORNEY AT LAW

2684 WEST ELEVEN MILE ROAD

BERKLEY, MI 48072

248-591-9291

248-591-2304 FAX

HERMANNLAWOFFICES@COMCAST.NET

\*\*\*\*\*

*Notice: This e-mail message and any attachments are for the confidential use of the intended recipient.*

*If that isn't you, please do not read the message or attachments, or distribute or act in reliance on them.*

*If you have received this message by mistake, please immediately notify us and delete this message and*

*any attachments. Thank you.*

**From:** Paul Nicoletti [mailto:[paulnicoletti@gmail.com](mailto:paulnicoletti@gmail.com)]

**Sent:** Thursday, May 15, 2014 12:22 PM

**To:** John Hermann; jthermanos

**Subject:** NEMI69-1; Malibu Media v. Jason Pontello; Case No.: 2:13-cv-12197 | PLAINTIFF'S MOTION TO COMPEL AND FORENSIC IMAGING OF DRIVES

John,

Below are a number of discovery issues I would like to address in order to get this case moving along. The parties have until June 30 to conduct discovery. Therefore, it is vital that I hear back from you as soon as possible.

1. First, I never heard back from you regarding Plaintiff's issues with the deficiencies in Defendant's discovery responses. Therefore, I am preparing a Motion to Compel and pursuant to LR 7.1, I am seeking your concurrence. Please advise as soon as possible. I am attaching the Discovery Letter to this email for your convenience.
2. Pursuant to the terms of the Protective Order [DE 31 Ent. 4.30.14], Plaintiff intends to have Patrick Paige perform the forensic imaging of the drives. Please let me know how quickly you can have the drives (MacBook Pro, Dell Inspiron 720, multiple Apple iPads) shipped to Patrick Paige. If you would consider using a local computer professional instead of shipping the drives to Patrick Paige, please let me know immediately. If I do not hear back from you by end of business on Friday (5-16-14), I will add this issue to Plaintiff's motion to compel.
3. Lastly, I would also like to set up dates and times for the deposition of Defendant, his father (Dan Pontello) and his neighbors. I am available to conduct these depositions on June 17th or June 18th. If these dates are not suitable, please provide me with alternate dates.
4. Please advise if you will agree to allow Comcast to appear at trial via live video stream instead of having to appear in person. If you agree, we will not depose Comcast and instead will only send a subpoena *duces tecum* for production of documents. If possible, I need an answer before 3:00 p.m. today. Sorry for the late notice.

Best Regards,

NICOLETTI LAW, PLC  
Paul Nicoletti (P-44419)  
33717 Woodward Avenue, Ste. #433  
Birmingham, MI 48009  
Landline: (248) 203-7800  
eFax: (248) 928-7051  
Email: [paulnicoletti@gmail.com](mailto:paulnicoletti@gmail.com)  
<http://www.nicolettilawplc.com>

This e-mail message contains confidential privileged information intended solely for the addressee. Please do not read, copy, or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (248) 203-7800 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Thank you. This e-mail and all other electronic (including voice) communications from the sender's firm are for informational purposes only. No such communication is intended by the sender to constitute either an electronic record or an electronic signature, or to constitute any agreement by the sender to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed unless otherwise specifically indicated.

